

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALFRED GONZALES,<sup>1</sup>

NO. CIV. S-05-714 LKK/JFM

Plaintiff,

v.

O R D E R

CIGNA GROUP INSURANCE; LIFE  
INSURANCE COMPANY OF NORTH  
AMERICA; CIGNA CORPORATION;  
and CIGNA LIFE INSURANCE  
COMPANY OF NEW YORK,

Defendants.

A hearing on this case is scheduled for August 15, 2005,  
at 10:00 a.m., on the Law and Motion Calendar of this court  
pursuant to Life Insurance Company of North America's ("defendant")

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<sup>1</sup> In the first amended complaint, plaintiff omitted those  
claims involving his wife and it appears she is no longer a party  
to the instant action.

1 motions to strike and dismiss.<sup>2</sup>

2 Plaintiff, Alfred E. Gonzales, has filed a statement of non-  
3 opposition to defendant's motion to strike. In addition, plaintiff  
4 explains in his "opposition" brief to defendant's motion to dismiss  
5 that he attempted to amend his complaint to remove the second cause  
6 of action and faxed a stipulation and copy of the proposed second  
7 amended complaint to defendant's counsel. Opp'n at 2. Defendant's  
8 counsel, however, advised plaintiff that she could not receive  
9 authorization to sign the stipulation in time, and to file the  
10 second amended complaint - and, apparently, to leave the matter on  
11 the court's law and motion calendar.<sup>3</sup> Id. The court has examined  
12 plaintiff's "opposition" brief and the attached proposed second  
13 amended complaint indeed removes the second cause of action and  
14 cures any deficiencies defendant complains of in its motion to  
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16 <sup>2</sup> Defendant moves to strike plaintiff's demand for a jury  
17 trial. Defendant also moves to dismiss plaintiff's second cause  
of action.

18 <sup>3</sup> The proper course would have been for defendant to withdraw  
19 the motion to dismiss and await authorization. Again, it appears  
20 to the court that the defendant would pointlessly involve the court  
21 than to proceed practically. Defendant previously filed a motion  
22 to dismiss and a motion to strike containing the same allegations  
23 and arguments which was scheduled for July 18, 2005 on the court's  
24 Law and Motion Calendar. On July 1, 2005, the parties filed a  
25 stipulation with the court whereby the parties agreed that in lieu  
26 of the plaintiff filing opposition briefs to the motions,  
plaintiff would file a first amended complaint on or before July  
8, 2005. Plaintiff filed a first amended complaint on July 6,  
2005. Consequently, the court issued an order deeming defendant's  
motions withdrawn. Plaintiff's first amended complaint,  
unfortunately, did not cure the deficiencies defendant complains  
of, thus requiring defendant to re-file its motions and this  
court expending its limited resources on this matter. To put it  
directly, the court is not happy with the conduct of either party.

1 dismiss.

2 Accordingly, the court makes the following ORDERS:

3 1. The hearing on the motions to strike and dismiss  
4 presently before the court is VACATED.

5 2. Defendant's motions to strike and dismiss are GRANTED.

6 3. Plaintiff's jury demand is STRICKEN.

7 4. Plaintiff is directed to FILE his Second Amended  
8 Complaint within ten (10) days of this order.

9 IT IS SO ORDERED.

10 DATED: August 9, 2005.

11 /s/Lawrence K. Karlton  
12 LAWRENCE K. KARLTON  
13 SENIOR JUDGE  
14 UNITED STATES DISTRICT COURT  
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